
First set of joint proposals

Proposal for amendments to the Code relating to Regulation 2.5 of the MLC, 2006

Proposal for the text of amendments to the Code of the Maritime Labour Convention, 2006, submitted to the Director-General of the ILO for consideration by ILO Members and by the Special Tripartite Committee established under Article XIII with a view to adoption in accordance with Article XV of the Maritime Labour Convention, 2006.

This proposal reflects the principles that were adopted at the Ninth Session (2–6 March 2009) of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers.¹ The footnotes in this proposal are for information only and are not part of this proposal for the text of the amendments.

A. *Proposals relating to Standard A2.5*

1. In the present heading, “Standard A2.5 – Repatriation”, replace “A2.5” by “A2.5.1”.
2. Following paragraph 9 of the present Standard A2.5, add the following heading and text:

Standard A2.5.2 – Financial security²

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of a rapid and effective financial security system to assist seafarers in the event of abandonment of seafarers.

2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers’ employment agreement, the shipowner:

- (a) fails to cover the cost of the seafarer’s repatriation; or
- (b) has left the seafarer without the necessary maintenance and support; or

¹ ILO–IMO–WGPS/9/2009/10, *Final report*, Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers, Ninth Session. See: http://www.ilo.org/sector/activities/sectoral-meetings/WCMS_161446/lang--en/index.htm. The importance of this Working Group as part of the follow-up to the adoption of the Maritime Labour Convention, 2006, was also recognized in a resolution adopted by the 94th Session of the International Labour Conference when it adopted the Maritime Labour Convention, 2006. See: resolution concerning the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, International Labour Conference, *Provisional Record* No. 3-1(Rev.), 94th Session (Maritime), Geneva, 2006, p. 3-1/16. See: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_088130/lang--en/index.htm.

² The proposed title establishes the relationship between the provision of financial security for repatriation in Regulation 2.5, paragraph 2, and the concept of abandonment, as defined in the proposed new Standard A2.5.2, paragraph 2 (formerly paragraph 5 of the IMO/ILO Ad Hoc Expert Working Group “principles”).

-
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer who was employed or engaged or working in any capacity on a ship flying the flag of the Member.

5. For the purposes of this Standard, necessary maintenance and support of seafarers shall include: adequate food, clothing, accommodation, necessary medical care and other reasonable costs or charges arising from the abandonment.

6. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, provide documentary evidence of financial security issued by the financial security provider.³ The documentary evidence shall be posted in a prominent position in the seafarers' accommodation. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

7. The documentary evidence of financial security shall contain the information required in Appendix A2-I. It shall be in English or accompanied by an English translation.

8. Assistance provided by the financial security system shall be granted promptly upon request made by or on behalf of the seafarer concerned and supported by the necessary justification of entitlement in accordance with paragraph 2 above.

9. Having regard to Regulations 2.2 and 2.5, assistance provided by the financial security system shall be sufficient to cover the following:

- (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
- (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and
- (c) the cost of necessary maintenance and support from the act or omission constituting abandonment until the seafarer's arrival at home.

³ The Joint IMO/ILO Ad Hoc Expert Working Group agreed in 2009 that this item should be added to the list of areas subject to port State control and would accordingly be a matter to be certified for ships that must be both inspected and certified. See the Final report referred to in note 1 above, at paragraph 106. The term documentary evidence was used to address a difference in views as to the precise format of this documentation to provide evidence of financial security. This wording is also consistent with the approach adopted in the *ILO Guidelines on flag State inspection* that were prepared in 2008 by an international tripartite meeting of experts.

10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarers from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

11. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

12. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

13. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

B. Proposal relating to Guideline B2.5

At the end of the present Guideline B2.5, add the following heading and text:

Guideline B2.5.3 – Financial security

1. In implementation of paragraph 8 of Standard A2.5.2, if time is needed to check the validity of certain aspects of the seafarer's request, this should not prevent the seafarer or a representative from immediately receiving such part of the assistance requested as is recognized as justified.

C. Proposal for a new appendix

Before Appendix A5-I, add the following appendix:

APPENDIX A2-I

Evidence of financial security under Regulation 2.5, paragraph 2

The certificate or ⁴ other documentary evidence referred to in Standard A2.5.2, paragraph 7 shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;

⁴ As noted above there were some differing views in the Joint IMO/ILO Ad Hoc Expert Working Group regarding the format for the evidence of this security. The wording "or" has been proposed to provide flexibility.

-
- (d) IMO number of the ship;
 - (e) name and address of the provider of the financial security;
 - (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
 - (g) name of the shipowner;
 - (h) period of validity of the financial security; and
 - (i) an attestation that the financial security meets the requirements of Standard A2.5.2.

D. *Proposals relating to Appendices A5-I, A5-II and A5-III*⁵

1. At the end of Appendix A5-I, add the following item:

Financial security for repatriation.

2. In Appendix A5-II, after item 14 under the heading *Declaration of Maritime Labour Compliance – Part I*, add the following item:

15. Financial security for repatriation (Regulation 2.5).

3. In Appendix A5-II, after item 14 under the heading *Declaration of Maritime Labour Compliance – Part II*, add the following item:

15. Financial security for repatriation (Regulation 2.5).

4. At the end of Appendix A5-III, add the following area:

Financial security for repatriation.

⁵ As indicated above in note 3, the Joint IMO/ILO Ad Hoc Expert Working Group agreed that these requirements would be included in the ship certification system.

Second set of joint proposals

Proposal for amendments to the Code relating to Regulation 4.2 of the MLC, 2006

Proposal for the text of amendments to the Code of the Maritime Labour Convention, 2006, submitted to the Director-General of the ILO for consideration by ILO Members and by the Special Tripartite Committee established under Article XIII with a view to adoption in accordance with Article XV of the Maritime Labour Convention, 2006.

This proposal reflects the principles that were adopted at the Ninth Session (2–6 March 2009) of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers.⁶ The footnotes in this proposal are for information only and are not part of this proposal for the text of the amendments.

A. Proposals relating to Standard A4.2

1. In the present heading, “Standard A4.2 – Shipowners’ liability”, replace “A4.2” by “A4.2.1”.
2. Following paragraph 7 of the present Standard A4.2, add the following text:
 8. National laws and regulations shall provide that the system of financial security to assure compensation as provided by paragraph 1(b) of this Standard for contractual claims, as defined in Standard A4.2.2, meet the following minimum requirements:
 - (a) the contractual compensation, where set out in the seafarer’s employment agreement and without prejudice to (c) below, shall be paid in full and without delay;
 - (b) there shall be no pressure to accept a payment less than the contractual amount;
 - (c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;
 - (d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident;

⁶ ILO–IMO–WGPS/9/2009/10, *Final report*, Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, Ninth Session. The importance of this Working Group as part of the follow-up to the adoption of the Maritime Labour Convention, 2006, was also recognized in a resolution adopted by the 94th Session of the International Labour Conference when it adopted the Maritime Labour Convention, 2006. See resolution concerning the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, International Labour Conference, *Provisional Record* No. 3-1(Rev.), 94th Session (Maritime), Geneva, 2006, p. 3-1/16. See: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_088130/lang--en/index.htm.

-
- (e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.⁷

9. Each Member's laws and regulations shall ensure that seafarers receive prior notification if a shipowner's financial security is to be cancelled and be notified immediately if it is not to be renewed.

10. Each Member's laws and regulations shall ensure that the flag State is notified by the provider of the insurance if a shipowner's financial security is to be cancelled, upon cancellation and upon non-renewal.

11. Each Member shall require that ships that fly its flag provide documentary evidence of financial security issued by the financial security provider. The documentary evidence shall be posted in a prominent position in the seafarers' accommodation. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

12. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

13. The documentary evidence of financial security shall contain the information required in Appendix A4-I. It shall be in English or accompanied by an English translation.

Add the following heading and text following the present Standard A4.2:

*Standard A4.2.2 – Treatment of contractual claims*⁸

1. For the purposes of Standard A4.2.1 and the present Standard, the term "contractual claim" means any claim which relates to sickness, injury or death occurring while the seafarer is serving under a seafarers' employment agreement or arising from their employment under such an agreement.

2. Each Member's laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1 through rapid and fair procedures.

B. Proposals relating to Guideline B4.2

1. In the present heading, "Guideline B4.2 – Shipowners' liability", replace "B4.2" by "B4.2.1".
2. In paragraph 1 of the present Guideline B4.2, replace "Standard A4.2" by "Standard A4.2.1".

⁷ The wording which was contained in the principles that were proposed by the Joint IMO/ILO Ad Hoc Expert Working Group (see the Final report, referred to in note 6 above, at paragraphs 149–152 and Appendix II, "principles" at paragraph 4), has been adjusted for legal drafting reasons. Although the wording appears to have been the subject of agreement (see paragraph 152), the spokesperson for the Seafarers' group called for the paragraph to be placed in square brackets (see paragraph 151). It is noted that the present proposal does not contain the square brackets.

⁸ The principles proposed by the Joint IMO/ILO Ad Hoc Expert Working Group covered two issues. See the Final report, referred to in note 6 above, at paragraphs 133–134.

-
3. Following paragraph 3 of the present Guideline B4.2, add the following heading and text:

Guideline B4.2.2 – Treatment of contractual claims

1. National laws or regulations should provide that the parties to the payment of a contractual claim may use the Model Receipt and Release Form set out in Appendix B4-I.

C. Proposals for new appendices

1. After Appendix A2-I, add the following appendix:

APPENDIX A4-I

Evidence of financial security under Regulation 2.5, paragraph 2

The documentary evidence of financial security required under Standard A4.2.1, paragraph 13, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and contact details of the provider/s of the financial security;
- (f) place of business of the provider/s of the financial security;
- (g) name of the shipowner;
- (h) period of validity of the financial security;
- (i) an attestation by the competent authority that the financial security meets the requirements of this Standard.

2. After Appendix A4-I, add the following appendix:

APPENDIX B4-I

Model receipt and release form
referred to in Guideline B4.2.2

Ship:

Incident:

Seafarer/legal heir and/or dependant:

Shipowner:

I, [Seafarer] [Seafarer's legal heir and/or dependant]* hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Shipowner's obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of my/the Seafarer's employment and I hereby release the Shipowner from its obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to my/the Seafarer's legal heir and/or dependant's right to pursue any claim at law in respect of negligence, tort or any other legal redress available and arising out of the above incident.

Dated:

Seafarer/legal heir and/or dependant:

Signed:

For acknowledgement:

Shipowner/Shipowner representative:

Signed:

Insurer/Insurer representative:

Signed:

* Delete as appropriate.

D. Proposals relating to Appendices A5-I, A5-II and A5-III⁹

1. At the end of Appendix A5-I, add the following item:

Financial security relating to shipowners' liability.

2. In Appendix A5-II, after item 15 under the heading *Declaration of Maritime Labour Compliance – Part I*, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2).

3. In Appendix A5-II, after item 15 under the heading *Declaration of Maritime Labour Compliance – Part II*, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2).

4. At the end of Appendix A5-III, add the following area:

Financial security relating to shipowners' liability.

⁹ The IMO/ILO Ad Hoc Expert Working Group agreed in 2009 that this item should be added to the list of areas subject to port State control and would accordingly be a matter to be certified for ships that must be both inspected and certified. See Final report referred to in note 1 above, at paragraph 126. This wording is also consistent with the approach adopted in the *ILO Guidelines on flag State inspection* that were prepared in 2008 by an international tripartite meeting of experts. See: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_101788/lang--en/index.htm.